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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
RAINBOW BROADCASTING COMPANY)
For Extension of Construction)
Permit and For Consent to)
Assignment of Station WRBW(TV))
Orlando, Florida)

58
File Nos. BMPCT-910625KP
BTCCT-911129KT

95-172

To: The Commission

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RAINBOW OPPOSITION TO PRESS
CONTINGENT APPLICATION FOR REVIEW

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10 September 1993

SUMMARY

The "Contingent Application for Review" filed by Press Broadcasting Company, Inc. is the latest in Press' ongoing effort to prevent Rainbow Broadcasting Company from initiating a new television service on Channel 65, Orlando. Notwithstanding Press' lack of standing to challenge Rainbow's request for extension of time to construct and pro forma assignment application to convert from a general to a limited partnership, the Mass Media Bureau fully considered and properly rejected Press' informal objections by letter of July 30, 1993.

Press should not be permitted to further burden and abuse the Commission's processes for its private purposes. As shown in Argument I, Press' "Contingent Application for Review" should be dismissed as deficient under Section 5 of the Act and Rule 1.115(a), both of which require a petitioner such as Press to demonstrate that it has been "aggrieved" by grant of Rainbow's minor modifications.

However, should the Commission consider Press' arguments, the same result is dictated, as shown in Argument II: The Bureau acted in accordance with Commission rules and precedent in ruling that Rainbow was entitled to the normal two years after final grant to construct and should not be penalized for the delay engendered by

Press' meritless objections. The Bureau Chief properly found Rainbow fully qualified to be a Commission licensee. Based upon the Bureau's decision, Rainbow has ordered its antenna and wave guide and expended substantial additional sums to ensure the commencement of broadcast operations within the 8 month period granted.

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To: The Commission

RAINBOW OPPOSITION TO PRESS
CONTINGENT APPLICATION FOR REVIEW

Rainbow Broadcasting Company, permittee of UHF television Station WRBW, Channel 65, Orlando, Florida, hereby opposes the 26 August 1993 "Contingent Application for Review," filed by Press Broadcasting Company, licensee of Station WKCF(TV), Channel 18, Clermont, Florida. The current filing is yet another in a continuing effort by Press to subvert the Commission's processes to its own private anticompetitive purposes.

PRELIMINARY STATEMENT

Background

Simply stated, Press does not want Rainbow to construct and initiate operation of Station WRBW, Channel 65, Orlando. Press' real reasons have nothing to do with the public interest but a great deal to do with the fact that Press persuaded the Commission to let it transmit

from the Bithlo Tower near Orlando, some 40 miles east of Clermont, Press' city of license, on the strength of its assertion that it would provide a city grade signal over Clermont.^{1/} In fact, Press could provide such a signal, if at all, only by operating from the 1580 foot slot on the Bithlo Tower, the slot already leased to Rainbow and for exclusive use of which Rainbow paid over \$250,000 in rent between 1985 and 1991. Rainbow objected to Press' incursion into its antenna aperture and instituted legal action against the tower owner, Guy Gannet Publishing Company; it also objected to Press' requested move before the Commission.

Although Press was successful before the Commission and was allowed, *inter alia*, to relocate, Rainbow subsequently discovered that Press' lease agreement with Gannett required Press to abandon the 1500 foot position if that were required by a settlement of the *Rey v. Gannett* action (See Gannett/Press Addendum to Lease Agreement, pages 2-3, Rainbow Petition for Reconsideration, Appendix C, filed July 2, 1993, attached hereto as Exhibit A). Thus, it is Press' precarious position on the Bithlo

1/ Amendment of Section 606(b), Table of Allotments, Television Broadcast Stations (Clermont and Cocoa, Florida), 4 FCC Rcd. 8320 (MMB 1989), review denied, 5 FCC Rcd. 6566 (1990), affirmed, *Rainbow Broadcasting Company v. F.C.C.*, Case No. 90-1591 (D.C. Cir. 1991).

Tower (which it never disclosed to the Commission) that has fueled its increasingly hysterical efforts to prevent Rainbow from commencing operation.

The Bureau's Ruling

In granting Rainbow's request for extension of time to construct (BMPCT-910625KP) and its Form 316 pro forma assignment application (BTCCT-911129KT), the Mass Media Bureau noted that Rainbow should have been permitted the normal two year period to construct after the grant became final on August 30, 1990.^{2/} See 47 C.F.R. § 73.3598(a). But for the delays engendered by Press' "informal objections," Rainbow's schedule projected a December 1992 commencement of broadcast operation. However, from February 1991, when Press lodged its first informal objection against Rainbow's extension request, until June

2/ Notwithstanding the pendency of judicial review, Rainbow was required to file Form 307 extension requests from 1987 to 1990. Press' suggestion (Application for Review, page 2) that Rainbow should be held liable for not constructing while the case was pending before the Court of Appeals, held in abeyance by Commission action, and under review by the Supreme Court, is plainly absurd and contrary to the Commission's expectation of permittees. See *Community Service Broadcasting, Inc.*, FCC 93-346, released July 26, 1993, paragraph 3, "declin[ing] to draw any adverse inference from the parties' decision to defer consummation of [a sale] while matters [were] litigated before the Commission and the courts," on the ground that "[t]his course of action is reasonable given . . . the risk that the sale may later be set aside"

18, 1993, when the Bureau issued its initial letter denying Rainbow's June 1991 Form 307 request and mooted Rainbow's November 1991 pro forma assignment request, Rainbow's status was held in limbo by Press' repeated "informal objections" and the lack of action thereon.^{3/}

By letter of July 30, 1993, the Chief of the Mass Media Bureau properly held that Rainbow should have been afforded the normal two year period after grant finality without the requirement of an extension showing;^{4/} that contrary to Press' repeated assertions, Rainbow had not made misstatements or misrepresentations regarding the pendency and effect upon Rainbow's construction efforts of the tower litigation; and that the *pro forma* assignment raised no question about Rainbow's financial qualifications. Based upon these findings, Rainbow was granted an 8 month extension of time to construct and its

3/ As with the situation described in footnote 3, above, it is neither logical nor equitable to charge Rainbow with failure to construct in the two year period during which its minor requests hung fire before the Commission, given that denial of the extension would be fatal to its entire venture and denial of the pro forma transfer would require the station to be financed by a loan instead of equity investment.

4/ This letter reconsidered and reversed a June 18, 1993 letter of the Chief, Video Services Division, denying Rainbow's June 1991 extension request and dismissing as moot its November 1991 pro forma assignment application.

pro forma assignment was approved. The Bureau's July 30, 1993 letter did not address Rainbow's repeated assertion that Press lacks standing to object to Rainbow's minor modification requests because it has not and could not have claimed to be aggrieved thereby. That same absence of aggrievement deprives Press of standing to file an application for review, 47 U.S.C. § 5(c)(4); 47 C.F.R. § 1.115(a), whether "contingent" or otherwise.^{5/}

ARGUMENT

I. PRESS LACKS STANDING TO SEEK REVIEW OF THE CHALLENGED BUREAU ACTIONS.

Press' application for review is facially defective and should be dismissed without consideration for failure to comply with the requirements of Section 5(c)(4) of the Act and Section 1.115(a) of the Commission's rules, which limit the filing of applications for review to persons "aggrieved" by the challenged action. Press does not

^{5/} Press' concurrently pending motion for emergency relief is likewise without basis or merit. This proceeding, notwithstanding Press' "informal objections," was at all times a proceeding exempt from the ex parte rules and Rainbow's July 17, 1993 meeting with the Bureau staff was proper and permissible, as discussed in Rainbow's Opposition to Press' Emergency Motion, which is attached hereto as Exhibit B. Moreover, at the time of the meeting, Press' Petition for Reconsideration of the February 1991 action had been dismissed as moot, so even if that pleading had lent the requisite formality to Press' position, which it did not, it was no longer before the Commission.

here claim aggrievement^{6/}; nor has it ever done so, never having been anything but an informal objector.^{7/} If Press is operating on the assumption that the filing of informal objections makes it a party, it is mistaken; the Commission has specifically ruled that the filing of informal objections "is insufficient to confer . . . party status." *Montgomery County Broadcasting Corp.*, 65 F.C.C.2d 876, 877 (1977). Nor, as the Commission essentially recognized in that case, would the Act permit of any other result, since informal objections may be filed

6/ Press' incantation (Application for Review, page 2) that it is a competitor and therefore has standing under *F.C.C. v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940), implicitly asserts a right Press never sought to exercise, the right to seek intervention in the long concluded licensing proceeding. Sanders does not, however, address and manifestly therefore cannot be asserted in derogation of the additional aggrievement requirements of the Act governing standing to file petitions for reconsideration (Section 405) or applications for review (Section 5).

7/ On February 25, 1991, Press filed a pleading denominated a Petition for Reconsideration of the Bureau's February 5, 1991 grant of an extension of time to construct. However, that pleading was no more than a re-denominated submission of informal objections which had not been filed until after grant of the challenged extension. The Bureau never ruled on Rainbow's request (Opposition to Press Petition for Reconsideration, filed March 12, 1991, pages 1-3) for its dismissal under Section 405 and Rule 1.106(b) for failure to make the requisite statement, "with particularity" of "the manner in which" Press' interests were adversely affected because the Bureau never acted on the Petition for Reconsideration, simply dismissing it as moot in the June 18, 1993 letter denying the extension.

by "any person" (Rule 73.3587) and to confer thereby the right to reconsideration or review would impermissibly read the specific eligibility requirements of Sections 4 and 405 out of the Act.^{8/}

Nor could Press have made the requisite showing of aggrievement because the minor modifications to Rainbow's preexisting authorization here at issue can have no impact on Press or anyone else; rather, it is the Commission's long final action in granting Rainbow's license to which Press objects and which it seeks indirectly and impermissibly to undo. That effort should be rejected on its face without consideration of Press' substantive arguments.

8/ Press' invocation of *Sanders*, discussed in footnote 6, *supra*, would be as ineffective in establishing its right to judicial review as it is in establishing standing here because Section 402 of the Act carries the same aggrievement requirement as Sections 4 and 405. See *Golden State Broadcasting Limited Partnership v. F.C.C.*, 996 F.2d 386, 395-396 (D.C. Cir. 1993). Moreover, and independent of the Act, in order to invoke the Article III jurisdiction of the courts, Press would have to demonstrate, *inter alia*, both that it had been injured and that its injury was caused by the challenged Commission action-- i.e., by grant of the extension of time to construct and the pro forma transfer. See *Aeronautical Radio, Inc. v. F.C.C.*, 983 F.2d 275, 280 n.19 (D.C. Cir. 1993).

II. THE BUREAU ACTED PROPERLY IN GRANTING RAINBOW'S
EXTENSION AND PRO FORMA ASSIGNMENT AND FINDING IT
FULLY QUALIFIED.

Press argues that the decision of the Chief, Mass Media Bureau, granting Rainbow an extension of time to construct and approving the *pro forma* assignment, making the permittee a limited partnership with the same general partners, conflicts with established Commission rule and precedent and fails to provide enough discussion of Press' arguments (Application for Review, pages 7-9). Specifically, Press argues that Rainbow should have been charged with failing to commence construction of the station in 1985 (pages 10-14); that Rainbow's filings with the Commission have lacked candour and contained misrepresentations (pages 14-15); and that Rainbow is not financially qualified to construct and operate the station (pages 14-19).

Press filed "informal objections" to every minor request filed by Rainbow since the completion of judicial review of the license grant on August 30, 1990.^{9/} Each of Press' underlying arguments was considered and addressed by the Bureau Chief. Press may not dictate the

9/ Any objective review of Press' actions reveals a clear pattern of harassment and a concerted effort to utilize the Commission's processes to restrain a new market entrant. That is, pure and simple, what this case is about. It furthers no public interest and strains the administrative process for no public purpose.

form of that consideration or complain that it did not receive a sufficiently wordy explication. Even assuming Press had standing under Section 5 of the Act (which it does not, as noted in Argument I, *supra*), and had filed a formal petition, it would have been entitled to no more than a concise statement of the reasons for the action. Neither its informal objection nor its present filing (further assuming Press' absent standing to seek review) entitles it to any explanation, since applications for review may be denied without specification of reasons under Section 5(c)(5) of the Act.

Press' attacks on Rainbow are no more availing on the merits than its attack on the Bureau's decisional process. Press' argument (Application for Review, pages 10-11) that Rainbow was obligated to construct the station in the five year period during which its grant was subject to judicial review or Commission reconsideration is both cynical and contrary to agency policy. The Commission has long recognized and cautioned applicants that construction during the pendency of judicial review is at the applicant's peril. Recently, in an analogous situation, the Commission again reiterated that "we decline to draw any adverse inference from the parties' decision to defer consummation of this transaction while matters are

litigated before the Commission and the courts." *Community Service Broadcasting, Inc.*, FCC 93-346, released July 26, 1993, paragraph 3. The Commission went on to note that the potential penalty for going ahead with a transaction "before its approval becomes final" is that the authorization may be "set aside by the Commission and the courts." *Id.* Press' suggestion that Rainbow was required to construct while the entire minority preference policy was the subject of intense administrative, legislative and judicial scrutiny is frivolous.

Similarly, Press' argument that the Chief of the Bureau exceeded his authority by not penalizing Rainbow for the delay in grant of its timely filed requests for extension and pro forma assignment caused by Press' repeated objections, would not only work a great injustice on Rainbow but also ensure the availability of the Commission's processes to those seeking to stifle other new market entrants. The Bureau Chief said that Rainbow was entitled to a normal two year construction period after final grant, a holding in accord with both the Commission's rules (Section 73.35) and its decisions (e.g., *Community Service, supra*). Had Rainbow been accorded that initial two year period, its request for extension and pro forma assignment would not have been relegated to

the dead letter box for two years-- from June 1991 until June 1993. Moreover, Rule 73.3534(b)(3) excuses nonconstruction within the two year period when the reasons therefor are beyond the permittee's control. Government inaction is one such reason. *Golden Eagle Communications, Inc.*, 6 FCC Rcd. 5127, 5129 (1991), *reconsideration denied*, 7 FCC Rcd. 1752 (1992). Neither the *Report and Order*, 102 F.C.C.2d 1054 (1985) nor the rule itself suggests that such government inaction excludes the Commission.

Contrary to Press' assertion (pages 14-15), Rainbow accurately and honestly reported its status and anticipated construction schedule to the Commission throughout this proceeding.^{10/} From the date of the final grant in August 1990 until the November 1991 filing of the *pro forma* assignment application, Rainbow consistently recited its anticipated broadcast commencement date as December 1992. While the tower litigation slowed construction, it was the lack of action on Rainbow's

^{10/} Press' entire argument on this point makes sense only if one accepts its initial article of faith that Rainbow never intended to construct, from which Press infers not only that everything Rainbow said to the Commission about its plans must have been false but also that the \$1 million spent on construction during this period was spent only for the purpose of inconveniencing Press.

timely requests which ultimately made it impossible for Rainbow to meet that schedule.^{11/} Press' effort to conjure a pattern of misrepresentation or deceit is nothing more than an effort to enlist the Commission in Press' flight of fantasy. The Chief of the Bureau considered and rejected Press' unsubstantiated assertions. They merit no further examination.

Finally, Press argues that because Rainbow sought to restructure into a limited rather than a general partnership, a financial qualifications enquiry is mandated. It is well established that "an applicant for a pro forma change of control is not required to demonstrate financial qualifications." *Canton 67, Ltd. Debtor in Possession*, 7 FCC Rcd. 736, 738 (1992). Moreover, the Commission recognizes that "projected expenditures and sources

^{11/} Contrary to Press' suggestion, Rainbow accurately reported the status of the tower litigation to the Commission and notified the Commission of its intention to proceed with construction after denial of its preliminary injunction motion. See From 307 filed June 6, 1991. In fact, Rainbow proceeded with construction of its \$60,000 transmitter building and so informed the Commission by Supplement to BMPCT-910625KP, filed November , 1991. Further, contrary to Press' assertion at note 13, Rainbow did not construct its transmitter building to accommodate Press and was under no obligation to do so. It is interesting that even in this affirmative assertion Press has never provided an affidavit of one with personal knowledge as is required even for informal objections. See *Area Christian Television, Inc.*, FCC 86-298, 60 R.R.2d 862, 864.

of funds relied upon by applicants in establishing their financial qualifications frequently change and are rarely carried out as planned." *Urban Telecommunications Corp.*, 7 FCC Rcd. 3867, 3870 (1992). Rainbow's *pro forma* assignment raises no financial issue and Press has offered no evidence to support its self-described "suspicion".


Rainbow is a 100% minority controlled permittee. It has spent 10 years and more than \$1 million in pursuit of its Channel 65, Orlando authorization. Notwithstanding Press' unrelenting assault on that authorization, Rainbow has now ordered its antenna, wave guide and related equipment, making a 35% cash down payment. See Order Confirmation attached as Exhibit C. Rainbow intends to have the station operational on schedule.

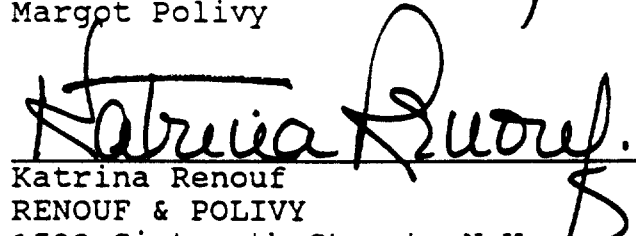
CONCLUSION

Press has failed to demonstrate the aggrievement prerequisite to the filing of an application for review, which would mandate dismissal even if such injury were present, see *Montgomery County Broadcasting Corp.*, 65 F.C.C.2d 876, 877 (1977), which it is not. Its application for review should accordingly be dismissed without consideration. In any event, Press' application for review presents no question requiring Commission reversal of the Bureau's July 30, 1993 action. Press' only intent

is to deprive the Orlando public of another service in furtherance of its own private economic ends. Rainbow urges that the Commission clearly reject Press' efforts to subvert the Commission's processes to nonpublic purposes and dismiss the Contingent Application for Review forthwith.

Respectfully submitted,


Margot Polivy


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Counsel for Rainbow
Broadcasting Company

10 September 1993

EXHIBIT A

ADDENDUM TO LEASE AGREEMENT

ADDENDUM to Lease Agreement of even date by and between Guy Gannett Publishing Co., a Maine corporation with offices in Miami, Florida, doing business as Bithlo Tower Company ("Landlord"), and Press Broadcasting Company, a _____ ("Tenant");

W I T N E S S E T H:

WHEREAS, the parties hereto have executed, on even date herewith, a lease (the "Lease") which grants Tenant the right to lease space on Landlord's broadcast tower located in Bithlo, Florida (the "Tower"); and

WHEREAS, Landlord is party to a certain lawsuit filed by Rainbow Broadcasting Company ("Rainbow") which contests Landlord's ability to lease space on the Tower identified in the Lease without violating Rainbow's claimed rights under its lease with Landlord dated December, 1985 ("Rainbow Lease");

WHEREAS, Rainbow has been denied a preliminary injunction which sought to restrain Landlord from permitting Tenant's location at approximately the 1500 foot level of the Tower, but has nevertheless indicated it plans to proceed with the litigation; and

WHEREAS, Landlord and Tenant have agreed that Tenant's rights under the Lease shall be subject to whatever might result from any pending and future Rainbow litigation against Landlord;

NOW, THEREFORE, Landlord and Tenant hereby mutually agree, that the Lease be and the same hereby is amended as follows:

1. Agreements With Respect to Risks Associated With Rainbow Litigation

Tenant is fully aware of the pending Rainbow lawsuit described above and of Rainbow's stated determination to proceed with such litigation until its "rights have been vindicated" (See letter from Michael Nachwalter dated June 17, 1991 attached hereto as Exhibit A). Tenant further acknowledges that Rainbow may modify its claims in the pending lawsuit or file additional actions contesting Landlord's right and ability to comply with its obligations under the Lease or alleging breach of the Rainbow Lease by reason of the Lease with Tenant or covenants or agreements contained therein. Tenant also acknowledges that actions by Rainbow are wholly beyond the power of Landlord to

anticipate or control and has been advised that Landlord will not agree to any compromise with Rainbow.

In consideration of and as an inducement to Landlord's entry into the Lease, Tenant hereby agrees that all costs, expenses and losses (direct or indirect, including but not limited to costs, damages, expenses and losses associated with any delay in Landlord's performance under the Lease or the loss, modification or curtailment of Tenant's rights under the Lease) experienced or incurred by Tenant (a) in connection with, or related to, litigation, administrative proceedings or other actions brought by, through or under Rainbow, its partners or the successors or assigns of either against Landlord or Tenant contesting Landlord's right to lease space to Tenant or the utilization of Landlord's Premises by Tenant, including without limitation actions contesting (i) either party's right to enter into the Lease, (ii) the location of Tenant's equipment on the Tower or elsewhere on Landlord's Premises or the construction of the Transmitter Building addition for Tenant's equipment, or (iii) preventing Landlord from fulfilling any of its other obligations under the Lease or from permitting Tenant to exercise any of its rights thereunder (hereafter "Rainbow Actions"), (b) arising or resulting from termination of the Lease as hereafter provided, or (c) arising or resulting from any and all delays in final resolution and execution of the Lease since the date on which Rainbow first threatened to attempt to prohibit Tenant's location on the 1500 foot level of the Tower, shall be the sole and separate responsibility of Tenant.

Any failure of Landlord to perform its obligations under the Lease by reason of a Rainbow Action shall be deemed excused, Landlord shall have no liability therefor and shall not be deemed to be in breach of its obligations under the Lease. For so long as any Rainbow Action prevents Landlord's performance under the Lease, Landlord's time for performance of any obligations so delayed shall be extended accordingly.

All of Landlord's representations, warranties and covenants in the Lease, express or implied, including but not limited to the covenant of quiet enjoyment, are hereby qualified accordingly.

2. Termination Rights.

A. Landlord shall have the right to terminate the Lease upon written notice to Tenant in the manner provided in the Lease in the event that:

(i) Landlord is enjoined, restrained or otherwise prohibited by a Rainbow Action from permitting the placement of Tenant's equipment at the height level on the Tower or at the

Transmitter Building location specified in the Lease or from constructing the addition to the Transmitter Building required for location of Tenant's transmitter and related equipment;

(ii) Tenant is enjoined, restrained or otherwise prevented by a Rainbow Action from permitting the placement of its equipment at the height level on the Tower or at the Transmitter Building location specified in the Lease;

(iii) Landlord is enjoined, restrained or otherwise prevented by a Rainbow Action from fulfilling any of its other obligations under the Lease or from permitting Tenant to exercise any of its rights thereunder;

(iv) Landlord believes, upon advice of counsel, that in connection with a Rainbow Action, Landlord has a material risk of being found to be in breach of the Rainbow Lease by virtue of its entry into the Lease or its performance of its obligations thereunder, and that, by termination of the Lease, Landlord may reasonably expect to mitigate damages for which it may be held liable in connection with the Rainbow Action, by out-of-court settlement or otherwise; or

(v) Landlord believes, upon advice of counsel, that an event described in Section 2A.(i), (ii) or (iii) is a likely result in a then pending Rainbow Action, and further determines that termination of the Lease may avoid Landlord's obligation to pay damages to Rainbow, its principals or successors or assigns, or may reduce the amount thereof.

3. Tenant shall have the right to terminate the Lease upon written notice to Landlord in the manner provided in the Lease in the event that:

(i) Tenant is enjoined, restrained or otherwise prohibited by a Rainbow Action from permitting the placement of Tenant's equipment at the height level on the Tower or at the transmitter building location specified in the Lease; or

(ii) Landlord is enjoined, restrained or otherwise prevented by a Rainbow Action from fulfilling any material obligation under the Lease or from permitting Tenant from exercising any material right thereunder for a period in excess of 180 days.

C. In the event of termination of the Lease by either party hereto in accordance with the provisions of Section 2A. or B. above, all terms of the Lessee, as amended hereby, which by their terms, or which by reasonable implication, are intended to survive the expiration or termination of the Lease, shall continue in full force and effect. Tenant shall also have the obligations set forth in Section 2D. below.

D. In the event of any termination of the Lease pursuant to the provisions of Section 2A. or B. above, Tenant shall:

(i) Promptly pay to Landlord any and all amounts due and owing under the Lease Agreement through the date of termination thereof;

(ii) Promptly after invoice, pay to Landlord any and all amounts payable pursuant to Section 2E. below; and

(iii) Dismantle, disconnect and remove, at Tenant's sole expense, the equipment of Tenant which has been installed in or connected to the Tower, the Transmitter Building or Landlord's Premises, subject to the conditions for removal set forth in the Lease.

If Tenant has not removed its equipment within 30 days of termination of the Lease pursuant to Section 2A. or B. above, such equipment shall be considered to have been abandoned by Tenant and shall become the property of Landlord.

Notwithstanding the foregoing, if within 30 days of any termination of the Lease as provided in Section 2A. or B. above, Tenant requests, in writing, that in lieu of the requirements specified in Section 4D(i), (ii) and (iii) above, the parties enter into a new Lease, Landlord shall execute a new lease with Tenant upon all of the same terms and conditions of the Lease, except that:

(a) Such replacement lease shall provide for Tenant's placement of its equipment on the 1300 foot level of the Tower (the exact location to be determined by Landlord) until such time as (1) Landlord is released from any applicable court order enjoining, restraining or otherwise prohibiting the placement of Tenant's equipment at the height level specified on the Tower, or (2) in the case of a termination of the Lease for a reason other than such a court order, Landlord determines, in its sole discretion, that it is able to relocate Tenant's equipment to the 1500 foot level of the Tower without breaching in any respect the Rainbow Lease and without incurring any damages to Rainbow by such relocation of Tenant's equipment. Any such replacement lease shall provide that Tenant's equipment shall be restored to the 1500 foot Tower level at such time; and

(b) If Landlord has been enjoined, restrained or otherwise prohibited from location of Tenant's transmitter and related equipment in the Transmitter Building location provided in the Lease or believes that it may be found in breach of the Rainbow Lease by such placement, the replacement lease shall

provide for Tenant's equipment to be housed in another location satisfactory to Tenant.

3. Notwithstanding a termination of the Lease pursuant to the provisions of Section 2A. or B. above, Tenant shall be obligated to reimburse Landlord for all costs incurred by Landlord in connection with the performance of the Landlord's Work in accordance with the provisions of Section IV(C) of the Lease Agreement, except in the case of a termination solely on account of Landlord's default under the Lease. Termination for the reasons set forth in Section 2A. and B. above shall not be considered a termination on account of Landlord's default. Tenant further agrees that Landlord shall have the right to complete any of the Landlord's Work notwithstanding any termination of the Lease, with Tenant being responsible as provided herein and in the Lease for reimbursing all costs of such work whether incurred before or after the effective date of such termination. Tenant's letter of credit securing its cost reimbursement obligations shall specifically refer to this Addendum and the provisions of this subsection as included among the obligations which may be satisfied from the proceeds of any drawing. As provided in Article IV(b) of the Lease, Tenant's interest in the Transmitter Building shall become the property of Landlord upon termination of the Lease.

3. Release By Tenant.

Tenant for itself, its successors and assigns, releases, acquits and forever discharges Landlord, its successors, assigns, and insurers, of and from any and all actions, causes of action, claims or demands for damages, costs, expenses, compensation, consequential damage, contribution, indemnification, or any other thing whatsoever on account of, or in any way connected with, related to or arising or resulting from (a) any litigation, administrative proceedings or other actions brought by, through or under Rainbow, its partners or the successors or assigns of either, against Landlord or Tenant contesting Landlord's right to lease space to Tenant or the utilization of Landlord's Premises by Tenant; (b) the termination of the Lease as provided in Section 2 above; (c) any and all delays in final resolution and execution of the Lease; or (d) any delay in performance of Landlord's obligations under the Lease to the extent excused hereby. Tenant hereby assumes all risk, chance or hazard that its injuries or damage, if any, caused by any of the foregoing may be or become greater or more extensive than is now known, anticipated or expected. No promise or inducement which is not herein expressed has been made to Tenant. In executing this release, Tenant does not rely upon any statement or representation made by Landlord or any person representing Landlord concerning the nature, extent or duration of said damage or losses or the legal liability therefor.

The giving and acceptance of this release shall in no way prejudice any defenses or any claims that either party may have against any other person, corporation, partnership or other entity arising out of the above-described events.

4. Interpretation.

Nothing contained herein is intended to mean, suggest or imply that Tenant's entry into the Lease is in derogation of, or limits, erodes or affects any rights accorded Rainbow under the Rainbow Lease. The parties hereto believe that Rainbow's claim that it has an exclusive right to the 1,500 foot space on the Tower is without legal merit and that the Lease in no manner interferes or is inconsistent with Rainbow's rights under the Rainbow Lease.

Except as specifically set forth herein, all of the terms and provisions of the Lease shall remain in full force and effect. All the terms and provisions of this Addendum shall survive termination of the Lease. All capitalized terms used in the Addendum which are defined in the Lease shall have the meaning provided in the Lease.

Dated this 25 day of June, 1991.

Landlord: Guy Gannett Publishing Co.
d/b/a Bithlo Tower Company

By: Michael L. Book
Its Vice President - Finance
TV

Tenant: Press Broadcasting Company

By: Alfred D. Colanton
Its VP/CFO

SEL/40050.CX7